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U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

April 4, 2022

BY ECF

The Honorable Colleen McMahon
United States District Judge
500 Pearl Street
New York, NY 10007

MEMO ENDORSED

Re: *Knight Institute v. Central Intelligence Agency, et al.*, 22 Civ. 1542 (CM)

Dear Judge McMahon:

This Office represents the defendant agencies in this Freedom of Information Act (FOIA) case. With the consent of the plaintiff, I write respectfully to request that the agencies' deadline to answer or otherwise respond to the complaint be adjourned without date.

FOIA cases are generally resolved through cross-motions for summary judgment based on legal argument and factual matter provided by declarations, without discovery. *See, e.g., Wood v. Fed. Bureau of Investigation*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. Dep't of Just.*, 19 F.3d 807, 812-13 (2d Cir. 1994). Other than certain basic facts about the procedural history of the request and the litigation, the allegations of the complaint, and the government's response to those allegations, will not be relevant to any dispute actionable under FOIA. Here, the agencies do not dispute that plaintiff made the FOIA requests at issue. Moreover, while it appears that plaintiff brought suit before exhausting its administrative remedies, *see* 5 U.S.C. §§ 552(a)(6)(A), (C), in light of the parties' ongoing discussions about the issues raised in the complaint, and although the government reserves its rights regarding an exhaustion defense, the government does not intend to move to dismiss on the basis of failure to exhaust.¹

For these reasons, an answer would serve no useful purpose in the litigation. Therefore, with plaintiff's consent, we respectfully request that the agencies' answer deadlines be adjourned without date.

9/5/2022
An answer serves in
no useful purpose in
many- perhaps most
litigations. But I let
me not excuse
compliance with
the Federal Rules.
I let you answer

¹ In light of plaintiff's failure to exhaust, the government does not believe that plaintiff would properly be entitled to attorneys' fees in this action, including for preparation of the complaint.

PS- you could
have drafted
it in the time
it took to
write this letter.

Honorable Colleen McMahon
April 4, 2022

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We thank the Court for its attention to this matter.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

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